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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/726,023
Filing Date: December 02, 2003
Appellant(s): TANZILLO ET AL.

Paul D. Greeley (Reg. No. 31,019)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on August 9, 2007 appealing from the Office action mailed on October 20, 2006.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The statement of the status of Amendments contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of invention contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

NEW GROUNDS OF REJECTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-10 are rejected under 35 U.S.C. 101 because the claims recite a "system" defined merely by software or terms synonymous with software (interface, manager, and components).

Claims 11-14 are rejected under 35 U.S.C. 101 because the claims recites nonfunctional descriptive material recorded on a machine-readable medium. It is not clear that the instructions stored in the machine-readable medium is computer executable.

When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See >Diamond v.< Diehr, 450 U.S. *>175,< 185-86, 209 USPQ *>1,< 8 (noting that the claims for an algorithm in Benson were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.").

Claims 15-24 are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to a machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v.

Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. Thus, claims 15-24 are non-statutory since they may be performed within the human mind.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al.

For the reason set forth above, claims 1-24 are non-statutory under 35 USC 101.

(7) *Claim Appendix*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) *Evidence relied Upon*

US 6,405,181	Lent et al.	06-2002
US 6,847,942	Land et al.	01-2005

(9) *Grounds of Rejection*

The following grounds of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-10 are rejected under 35 U.S.C. 101 because the claims recite a "system" defined merely by software or terms synonymous with software (interface, manager, and components).

Claims 11-14 are rejected under 35 U.S.C. 101 because the claims recites nonfunctional descriptive material recorded on a machine-readable medium. It is not clear that the instructions stored in the machine-readable medium is computer executable.

When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See >Diamond v.< Diehr, 450 U.S. *>175,< 185-86, 209

USPQ *>1,< 8 (noting that the claims for an algorithm in Benson were unpatentable as abstract ideas because “[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.”).

Claims 15-24 are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to a machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. Thus, claims 15-24 are non-statutory since they may be performed within the human mind.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101.

Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al.

For the reason set forth above, claims 1-24 are non-statutory under 35 USC 101.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7, 11, 13-21, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Lent et al (hereinafter Lent), U.S. Patent No. 6,405,181.

Regarding to claim 1, Lent discloses a system for assessing risk, comprising:

a user interface to receive requests and customer account information to be stored in a portfolio in a first database (column 3, lines 53-58, an application engine 104 creates an application by prompting an applicant for data and storing the entered data; column 4, lines 55-67, an application data structure 202 stores the data contained in an application and keeps track of the status of the application);

a risk assessment manger that provides application functions, services and portfolio analysis based on said requests (column 4, lines 18-37, Underwriter 110 receives data from the parsing engine and evaluates the data to determine if the

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applicant should receive for the offer of credit. The Underwriter makes an underwriting decision based on an analysis of the credit bureau data);

a data integration component that provides access to at least a second database (column 5, lines 15-20, the application data structure includes a set of credit report objects 214 associated with each credit report, at least two credit reports from two of three credit bureaus are ordered); and

a corporate linkage component that provides information to said risk assessment manager for user by said risk assessment manager in determining a total risk exposure based on said portfolio (column 2, lines 9-11; column 4, lines 18-25; column 5, lines 38-42 and column 8, lines 57-65, an Underwriter engine 214 automatically approves an application based on the information obtained from credit bureaus).

Regarding to claim 2, Lent further discloses wherein said risk assessment manager comprises: a scoring component that provides a risk score based on said portfolio (column 5, lines 38-43, FICO score received from credit bureaus).

Regarding to claim 3, Lent further discloses wherein said risk assessment manager comprises: a transfer component to import and export data to and from said first database (column 17, lines 12-17, the web server 1406 is connected to the Internet and communicates with the applicant host system to request and receive applicant information and to notify the applicant of the results of the approval process).

Regarding to claim 4, Lent further discloses where said data integration component enhances said customer account information, provides entity matching for said customer account information, and/or provides data products (column 4, lines 1-17,

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the parsing engine 106 parses the data into an exact format that may be used to directly access credit bureau data).

Regarding to claim 5, Lent discloses a computer system for assessing risk, comprising:

a portfolio analysis component that analyzes a portfolio of customer accounts and provides a data product containing a financial profile based on said portfolio (column 4, lines 18-37, Underwriter 110 receives data from the parsing engine and evaluates the data to determine if the applicant should receive for the offer of credit. The Underwriter makes an underwriting decision based on an analysis of the credit bureau data); and

a common decisioning component that automatically provides a credit decision based on said portfolio and user-defined rules and/or policies (column 2, lines 9-11; column 4, lines 18-25; column 5, lines 38-42 and column 8, lines 57-65, an Underwriter engine 214 automatically approves an application based on based on an analysis of the credit bureau data).

Regarding to claim 6, Lent further discloses wherein said common decisioning component comprises: a setup component that receives said user-defined rules and/or policies (column 5, lines 15-37).

Regarding to claim 7, Lent further discloses a configuration console component that provides administrative functions and security; wherein said administrative functions include an import function, an export function; and/or a score calculating function (column 3, lines 54-57, receiving application data from an applicant (import

function); column 4, lines 20-23, sending pared data to at least two credit bureaus (export function); column 5, lines 38-43, FICO score).

Regarding to claim 11, Lent discloses a machine-readable medium having instructions stored therein for performing a method of assessing risk, said method comprising:

receiving customer account information (column 3, lines 53-58, an application engine 104 creates an application by prompting an applicant for data and storing the entered data; column 4, lines 55-67, an application data structure 202 stores the data contained in an application and keeps track of the status of the application);

creating a portfolio based on said customer account information by applying at least one step selected from the group consisting of: entity matching, applying unique corporate identifiers, applying corporate linkage information, and applying predictive indicators (column 2, lines 9-11; column 4, lines 18-25; column 5, lines 38-42 and column 8, lines 57-65, an Underwriter engine 214 automatically approves an application based on the information obtained from credit bureaus);

providing a customer based analysis of said portfolio (column 5, lines 25-37);

providing a risk score for at least one customer in said portfolio based on said customer based analysis (column 5, lines 30-33, FICO score); and

providing an account profile for said at least one customer (column 4, lines 55-67, application data structure 202 includes an application object).

Regarding to claim 13, Lent further discloses providing days sales outstanding information for said at least one customer in said portfolio (column 5, lines 27-31, e.g. a

90 day attribute that indicates the number of times the applicant has been more than 90 days late in payment of a debt).

Regarding to claim 14, Lent further discloses wherein said account profile includes a financial statement (column 5, lines 15-20, application data structure 202 includes a set of credit report objects).

Regarding to claim 15, Lent discloses a computer-implemented method of assessing risk, which comprises:

enhancing data in a portfolio of customer accounts by a quality assurance process (column 3, lines 53-58, an application engine 104 creates an application by prompting an applicant for data and storing the entered data; column 4, lines 55-67, an application data structure 202 stores the data contained in an application and keeps track of the status of the application);

receiving and enforcing at least one user-defined rules and/or user-defined policy (column 5, lines 15-23, the Underwriter requires at least two credit reports from two of three credit bureaus);

providing automated credit decisioning for at least one customer based on said at least one user-defined rule and/or said at least one user-defined policy (column 2, lines 9-11; column 4, lines 18-25; column 5, lines 38-42 and column 8, lines 57-65, an Underwriter engine 214 automatically approves an application based on the information obtained from credit bureaus);

providing days sales outstanding for said at least one customer in said

portfolio (column 5, lines 27-31, e.g. a 90 day attribute that indicates the number of times the applicant has been more than 90 days late in payment of a debt); and

providing risk information for said at least one customer in said portfolio (column 5, lines 25-37, each credit report object includes a plurality of attitudes).

Regarding to claim 16, Lent further discloses segmenting said portfolio by a selected variable to uncover risks and opportunities in said portfolio (column 5, lines 25-37, each credit report object includes a plurality of attitudes).

Regarding to claim 17, Lent further discloses wherein said risk information includes a total risk exposure within a corporate entity associated with said at least one customer (column 5, lines 25-37, each credit report object includes a plurality of attitudes).

Regarding to claim 18, Lent further discloses wherein said quality assurance process includes at least one step selected from the group consisting of: entity matching, applying unique corporate identifiers, applying corporate linkage information, and/or applying predictive indicators (column 2, lines 9-11; column 4, lines 18-25; column 5, lines 38-42 and column 8, lines 57-65, an Underwriter engine 214 automatically approves an application based on the information obtained from credit bureaus).

Regarding to claims 19-21, Lent further discloses providing a financial profile of said at least one customer in said portfolio, wherein said financial profile includes how said at least one customer pays other companies, financial profile includes a financial

statement for said at least one customer (column 5, lines 25-37, each credit report object includes a plurality of attitudes).

Regarding to claim 23, Lent further discloses wherein said policy is selected from the group consisting of: a credit limit policy, a score policy, an exception policy, a collection policy, a selling term policy, and a financial selection policy (column 5, lines 38-43, a score policy).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lent et al (hereinafter Lent), U.S. Patent No. 6,405,181.

Regarding to claims 8-10, Lent does not disclose a country logic component that determines a base language and a base currency for said customer in said portfolio; a database access component that retrieves country specific data from a plurality of systems, wherein said plurality of systems are selected from the group consisting of: European Office System, Canada Bilingual Office System, United States Advanced Office Systems, Nordic, and Asian Pacific Latin America. However, determining a base

language and a base currency for customer and retrieving country specific data from such a plurality of system above are well known in the art. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Lent's adopt the well known features above for the purpose of providing more convenient to customer when accessing customer's account information.

7. Claims 12, 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lent et al (hereinafter Lent), U.S. Patent No. 6,405,181, in view of Land et al (hereinafter Land), U.S. Patent No. 6,847,942.

Regarding to claim 22, Lent does not disclose receiving a change in a financial statement for said at least one customer; and assessing a risk change in said portfolio based on said change in said financial policy according to said at least one user-defined rule and at least one user-defined policy. However, Land discloses receiving a change in a financial statement for said at least one customer; and assessing a risk change in said portfolio based on said change in said financial policy according to said at least one user-defined rule and at least one user-defined policy (column 12, lines 44-50). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Lent's adopt the teaching of Land above, for the purpose of updating customer's risk information, for the purpose of providing more accurate in making approval decision.

Regarding to claims 12 and 24, Lent does not disclose providing financial data about said portfolio in a selected currency providing a currency conversion feature; providing a local currency for said at least one customer in said portfolio; and assigning

a default currency for said at least one customer in said portfolio. However, Land discloses providing financial data about said portfolio in a selected currency (column 9, lines 25-43) and providing a currency conversion feature; providing a local currency for said at least one customer in said portfolio; and assigning a default currency for said at least one customer in said portfolio (column 9, lines 25-43). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Lent's adopt the teaching of Land above, for the purpose of providing more convenient to the customer when accessing customer's account information.

(10) Response to Argument

Claims 1-4

In response to the Appellant's argument that that Lent fails to disclose a user interface to receive requests and customer account information, examiner submits that Lent discloses in column 3, lines 53-58, an application engine 104 creates an application by communicating with the applicant over the World Wide Web using Java or html or other commonly used Internet protocols, and prompting an applicant for data and storing the entered data, thus the applicant can submit application over the over the World Wide Web via the application engine 104 which is equivalent to a user interface. Therefore, Lent does disclose a user interface to receive requests and customer account information.

In response to the Appellant's argument that that Lent fails to disclose a risk assessment manger that provides application functions, services and portfolio analysis

based on said requests, examiner submits that Lent disclose in column 4, lines 18-37,

Underwriter 110 receives data from the parsing engine and evaluates the data to determine if the applicant should receive for the offer of credit. The Underwriter makes an underwriting decision based on an analysis of the credit bureau data. Therefore, a risk assessment manger that provides application functions, services and portfolio analysis based on said requests.

In response to the Appellant's argument that that Lent fails to disclose a corporate linkage component that provides information to said risk assessment manager for user by said risk assessment manager, examiner submits that Lent discloses in column 2, lines 9-11; column 4, lines 18-25; column 5, lines 38-42 and column 8, lines 57-65, an Underwriter engine 214 automatically approves an application based on the information obtained from credit bureaus. According to the appellant's specification, corporate linkage "reveals the total risk exposure within a corporate entity" page 11, paragraph [0040]. Lent discloses an Underwriter engine that that uses information obtained from one or more credit bureaus to make a decision whether to grant consumer credit to an applicant. Information from a credit bureau about an individual's credit history does reveal the total risk exposure within a corporate entity, because information from a credit bureau contains a credit report listed the credit history of an individual for each lender (credit card companies, mortgage lender, automobile lender, etc...). Therefore, Lent does disclose a corporate linkage component that provides information to said risk assessment manager for user by said risk assessment manager.

Claim 5

In response to the Appellant's argument regarding to claim 5, examiner submits that examiner submits that Lent disclose in column 4, lines 18-37, Underwriter 110 receives data from the parsing engine and evaluates the data to determine if the applicant should receive for the offer of credit. The Underwriter makes an underwriting decision based on an analysis of the credit bureau data.

Claim 6

In response to the Appellant's argument regarding to claim 6, examiner submits that Lent disclose in column 4, lines 18-37, Underwriter 110 receives data from the parsing engine and evaluates the data to determine if the applicant should receive for the offer of credit. The Underwriter makes an underwriting decision based on an analysis of the credit bureau data

Claim 7

In response to the Appellant's argument regarding to claim 7, examiner submits that Lent discloses a configuration console component that provides administrative functions and security; wherein said administrative functions include an import function, an export function; and/or a score calculating function (column 3, lines 54-57, receiving application data from an applicant (import function); column 4, lines 20-23, sending pared data to at least two credit bureaus (export function); column 5, lines 38-43, FICO score).

Claim 11

See the same as claim 1 above.

Claim 13

In response to the Appellant's argument regarding to claim 13, examiner submits that Lent discloses providing days sales outstanding information for said at least one customer in said portfolio (column 5, lines 27-31, e.g. a 90 day attribute that indicates the number of times the applicant has been more than 90 days late in payment of a debt).

Claim 14

In response to the Appellant's argument regarding to claim 14, examiner submits that Lent discloses wherein said account profile includes a financial statement (column 5, lines 15-20, application data structure 202 includes a set of credit report objects).

Claims 15, 16, 18-21, and 23

See the same as claim 1 above. Moreover, Lent discloses in column 4, lines 18-37, Underwriter 110 receives data from the parsing engine and evaluates the data to determine if the applicant should receive for the offer of credit. The Underwriter makes an underwriting decision based on an analysis of the credit bureau data. Thus, the credit decision is based on the policy defined by the Underwriter.

Claim 17

In response to the Appellant's argument regarding to claim 17, examiner submits according to the appellant's specification, corporate linkage "reveals the total risk exposure within a corporate entity" page 11, paragraph [0040]. Lent discloses an Underwriter engine that that uses information obtained from one or more credit bureaus to make a decision whether to grant consumer credit to an applicant. Information from a

credit bureau about an individual's credit history does reveal the total risk exposure within a corporate entity, because information from a credit bureau contains a credit report listed the credit history of an individual for each lender (credit card companies, mortgage lender, automobile lender, etc...).

Claims 8-10

In response to appellant's arguments regarding the well-known statement recited in rejecting claims 8-10, examiner submits that *the appellant has not submitted any rebuttal of the well-known statement*, the appellant has not presented any arguments that the feature is not well known. The appellant stated "Is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection is based." This does not constitute a proper challenge to the Official Notice.

Claim 12

In response to the Appellant's argument regarding to claim 12, examiner submit that Lent does not disclose receiving a change in a financial statement for said at least one customer; and assessing a risk change in said portfolio based on said change in said financial policy according to said at least one user-defined rule and at least one user-defined policy. However, Land discloses receiving a change in a financial statement for said at least one customer; and assessing a risk change in said portfolio based on said change in said financial policy according to said at least one user-defined rule and at least one user-defined policy (column 12, lines 44-50). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was

made to modify Lent's adopt the teaching of Land above, for the purpose of updating customer's risk information, for the purpose of providing more accurate in making approval decision. Examiner notes that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any

one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981)

Claims 22 and 24

In response to the Appellant's argument regarding to claims 22 and 24, examiner submit that providing financial data about said portfolio in a selected currency providing a currency conversion feature; providing a local currency for said at least one customer in said portfolio; and assigning a default currency for said at least one customer in said portfolio. However, Land discloses providing financial data about said portfolio in a selected currency (column 9, lines 25-43) and providing a currency conversion feature; providing a local currency for said at least one customer in said portfolio; and assigning a default currency for said at least one customer in said portfolio (column 9, lines 25-43). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Lent's adopt the teaching of Land above, for the purpose of providing more convenient to the customer when accessing customer's account information. Moreover, Lent also discloses providing days sales outstanding

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information for said at least one customer in said portfolio (column 5, lines 27-31, e.g. a 90 day attribute that indicates the number of times the applicant has been more than 90 days late in payment of a debt).

(11) Related Proceedings Appendix

The statement of the related proceedings appendix contained in the brief is correct.

For the above reasons, it is believed that the rejections should be sustained. This examiner's answer contains a new ground of rejection set forth in section (9) above.

Accordingly, appellant must within TWO MONTHS from the date of this answer exercise one of the following two options to avoid sua sponte dismissal of the appeal as to the subject to the new ground of rejection:

(1) Reopen prosecution. Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) Maintain appeal. Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Nga B. Nguyen/
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